IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

Date:08-04-2011

:PRESENT:

THE HON'BLE SRI JUSTICE B.N. RAO NALLA

CRIMINAL REVISION CASE No.291 of 2005

Between:
Kosuri Aravind

..... PETITIONER/A-1

AND

State of A.P. Rep by PP, High Court of A.P. Hyderabad.,

..... RESPONDENT

JUDGMENT:

Accused Nos.1 and 2 in C.C.No.256 of 2001 on the file of the learned II Additional Judicial Magistrate of First Class, Machilipatnam, were found guilty of the offences under Sections 406 and 411 of the Indian Penal Code (for short “IPC") respectively and were accordingly convicted and sentenced to undergo rigorous imprisonment for one year and six months respectively by judgment dated 08-01-2003. Aggrieved by the same, both of them preferred Crl.A. No.33 of 2003 on the file of the learned I Additional District and Sessions Judge, Krishna, Machilipatnam. However, after hearing both sides, the first appellate Court was pleased to dismiss the appeal by judgment dated 16-02-2005 confirming the conviction and sentences recorded against A-1 and A-2 by the learned II Additional Judicial

Magistrate of First Class, Machilipatnam, in C.C.No.256 of 2001, dated 08-01-2003.

2. Aggrieved by the said dismissal order of the first appellate Court, A-1 preferred this Criminal Revision Case, inter alia, on the grounds: (a) that both the Courts below failed to appreciate the evidence and other material on record in proper perspective; (b) that both the Courts below erred in not considering the fact that it was A-1, who preferred Police complaint (Ex.P-7) in Crime No.1 of 2001 of Inaguduru Police Station; (c) that both the Courts below failed to consider the fact that some un-known culprits took away the gold by keeping A-1 under threat; (d) that both the Courts below erred in not taking note of the fact that none of the customers, who had entrusted gold to A-1 for making ornaments, preferred any complaint; (e) that both the Courts below ought to have come to a conclusion that ingredients of Section 405 of IPC were not made out; (f) that both the Courts below ought to have seen that the confessional statement and the evidence of PW.12 mediator were concocted by Police; (g) that both the Courts below failed to see that as per the prosecution case, PWs.10 and 11 were the receivers of the stolen property and as such, their evidence ought not to have been believed; (h) that both the Courts below erred in not considering the fact that the police being unable to trace out the actual culprits have thrown the entire blame on A-1, though he was the de-facto complainant in the case.

3. The facts in brief are that:

(a) A-1 is the proprietor of Srinivasa Gold Shop, Godugupet, Machilipatnam, and A-2 was working under him on daily wages.

(b) That A-1 was entrusted by his customers (PWs.5 to 8)

194 grams of gold for making ornaments. However, as per the conspiracy hatched by A-1 and A-2, A-1 sold away part of the said gold to PWs.10 and 11 on 01-01-2001 at the rate of Rs.2,200/- for 8 grams and kept the remaining 178 grams of gold with A-2.

(c) That during the intervening night of 1/2-01-01 at about 2.00 a.m., A-1 preferred a complaint with Inaguduru Police Station stating that while he was working in his shop at about 12.00 a.m., (mid night), a person entered the shop by breaking open the glass door with an iron rod and took away 194 grams of gold under the threat to his life and that though he raised cries no one came to his help. Basing on the said complaint of A-1, the Station House Officer of the said Police Station registered a case in Crime No.1 of 2001. That during the course of investigation, the confessional statement of A-1 was recorded wherein he has stated that he sold away

16 grams of gold to PWs.10 and 11 and kept the remaining gold at the house of A-2. That A-1 and A-2 were arrested on 02-01-2001 and gold was seized from A-2 in the presence of mediators under the cover of mediators report. Later, both of them were charge sheeted for the offences under Sections 406 and 411 of IPC respectively and that on their not pleading guilty to the charges, they were prosecuted and tried for the same.

4. In support of its case the prosecution has got examined PWs.1 to 14 and got marked Exs.P-1 to P-7 and M.Os.1 to 4 on its behalf. DW.1 was examined on behalf of the accused, however no documents were marked.

5. The trial Court, after appreciating the evidence and also considering the other material on record, found A-1 guilty of the offence under Section 406 IPC and A-2 under Section 411 IPC and

accordingly convicted and sentenced them as has already been stated supra.

6. It is the case of the petitioner/A-1 that the trial Court has erred in considering the evidence of PWs.5 to 8 in establishing their entrustment of gold to him since PWs.5 to 8 are set up witnesses by the police and that since he did not mention the names of PWs.5 to 8 in his complaint Ex.P-7, the question of PWs.5 to 8 entrusting gold to him does not arise and it cannot be said that PWs.5 to 8 had entrusted gold to him in the absence of any documentary evidence.

7. It is, however, for the prosecution to prove that during the course of investigation police recorded the statements of PWs.5 to 8 and subsequently they were examined in the Court of law. PW-5 has testified that he had entrusted
104 grams of gold to A-1. Similarly, PW.6 has testified that he has entrusted 40 grams of gold and PW.7 entrusted 30 grams of gold and PW.8 entrusted 20 grams of gold to A-1 under the cover of M.Os.1 to 4 and the trial Court believed their evidence.

8. It is further the case of the revision petitioner/A-1 that there was no material to show that he had misappropriated the gold that was entrusted to him and thereby committed criminal breach of trust. However, it is to be seen that since PWs.1 to 4 have stated before the police in their statements recorded under Section 161 of Cr.P.C. that they were not aware of the incident taking place in the shop of A-1 on the relevant day and time, the police further investigated the case, during the course of which, they had also examined and recorded the statements of PWs.5 to 8, who have stated that they had entrusted gold to A-1 for making ornaments.

Therefore, they were also examined as PWs.5 to 8 during the course of which they have reiterated what they have stated before the police in their statements.

9. It is further his case that the evidence of PWs.10 and 11, who were examined as receivers of stolen property, should not have been relied on since there was no documentary evidence to show that the revision petitioner/A-1 had sold part of the gold alleged to have been entrusted by them.

10. It is further his case that PWs.10 to 12 are set up witnesses by the police. Therefore, their evidence ought to have been eschewed from consideration. However, the evidence of PW.12 mediator and PWs.10 and 11 is that A-1 sold 8 grams of gold each to PWs.10 and 11. So far as the evidence of PW.12 mediator is concerned, it is contended that since he is the brother of PW-5 who is alleged to have entrusted 104 Grams of Gold to A-1, he can be safely be treated as an interested witness and as such, his evidence ought not to have been considered.

11. Lastly, it is contended that since there is a burglary in the shop of A-1 and certain amount of gold was stolen from his shop by an un-known person who entered the shop at mid-night by breaking the glass door open and took way the gold keeping him under threat, he preferred Ex.P-7 complaint before the police and the police instead of tracing out that un-known offender, implicated him falsely in this case.

12. Per contra, the learned Public Prosecutor submits that both the Courts below have rightly considered the evidence of all the prosecution witnesses in general and the evidence of PWs.5 to 8 and PWs.10 to 12 in particular and came to right conclusion in

finding the revision petitioner/A-1 guilty of the offence under Section 406 of IPC and accordingly, he was convicted by both the Courts below. Hence, he contends that the impugned judgment and order of conviction and sentence as passed by the trial Court does not suffer from any error or irregularity. More over, the question of impugned judgment being perverse does not arise.

13. In view of the aforesaid discussion, it cannot be said that both the Courts below have committed any error or irregularity in appreciating the evidence and other material on record since the evidence of PWs.5 to 8 clearly supported the case of the prosecution and that the evidence of PWs.1 to 4 clearly impeaches the version of A-1 as de-facto complainant, and thereby, the contents of Ex.P-7 complaint stands disproved. More over, the evidence of PWs.10 and 11 also supports the case of the prosecution.

14. In the result, this Court finds no merit in the revision. Accordingly, the revision is dismissed.

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B.N. RAO NALLA, J

Date:08-04-2011
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